

## Personal tax round up

(Lecture P1121 – 16.33 minutes)

### National minimum wage rates

Draft amending regulations include the new national minimum wage hourly rates that will apply from 1 April 2019:

- Aged over 21                      £7.70.
- Aged 18-21                        £6.15
- Aged under 18                    £4.35
- Apprentice rate                   £3.90

At the same time the National Living Wage for those 25 and over increases to £8.21 per hour.

### Disguised remuneration settlement terms

The disguised remuneration loan charge is nearly here. HMRC has reminded taxpayers that they can still come forward and provide the required information by 5 April 2019 to avoid having to pay the loan charge.

Taxpayer's who are not already speaking to someone at HMRC, can contact them by emailing:

- [cl.resolution@hmrc.gsi.gov.uk](mailto:cl.resolution@hmrc.gsi.gov.uk) for contractor loan schemes
- [ca.admin@hmrc.gsi.gov.uk](mailto:ca.admin@hmrc.gsi.gov.uk) for all other disguised remuneration schemes

HMRC can help taxpayers settle their tax affairs and get out of disguised remuneration avoidance schemes by spreading payments over a number of years as follows:

- Up to 7 years if expected current year taxable income is < £30,000;
- Up to 5 years if expected current year taxable income is less than £50,000;

If income is higher or taxpayers need a longer period to pay, there are no defined minimum or maximum time periods for payment arrangements. In agreeing a payment period, HMRC claim that they will take a realistic look at a taxpayer's income, assets and essential outgoings, alongside what they owe and any other debts and consider how much they are able to pay, and over what period.

HMRC's briefing in this area now emphasises that HMRC will not force those affected by the loan charge to sell their main home and will only consider insolvency where scheme users are either at risk of accruing further debt or actively avoid paying.

HMRC has stated that:

- anyone who registered to settle before 30 September and who sent the required information, should receive a calculation by the end of February 2019
- others who have registered should expect to hear from HMRC within 4 to 6 weeks, although it might take longer if lots of people come forward at the same time;
- nobody will be disadvantaged if they provided the relevant information by 5 April but have not been able to settle due to a delay at HMRC.

[www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs](http://www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs)

[www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans](http://www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans)

## **Ceasing to be UK resident and its implications**

*Summary – The taxpayer ceased to be UK resident in November 2003, making his emoluments to this date and founder's fee taxable. Restrictions being lifted on shares in 2005 and exercising options in 2008, both after he ceased to be UK resident, did not prevent him being liable to tax on these items.*

John Charman was born in and employed as a senior executive in the insurance industry in the UK until 2001 when he was unfairly dismissed. He became involved with MMC Capital Inc (MMC), a US company and in April 2001 started to discuss setting up a new insurance entity, Axis Specialty Limited that was to be based in Bermuda.

After a period of fund raising and preliminary work between 19 September and 20 November 2001, the new Bermudan insurance entity proposed by MMC started trading with Mr Charman as its president and chief executive. His employment contract entitled him to an annual salary of no less than \$1 million, an annual bonus of no less than 75% of his salary and expenses of no less than \$15,000 per month to cover his Bermuda living costs.

From 1 October 2001 Mr Charman was awarded share options in three tranches over three years and on 19 September 2002 he was awarded 50,000 restricted shares in Axis Specialty. In late 2002 or early 2003 he received a founder's fee in respect of the Axis Specialty project from MMC of \$2.5 million.

In March 2003 Mr Charman sent HMRC a form P85 "Leaving the United Kingdom" which stated that he had become non-resident in the UK for tax purposes on 27 January 2003. Mr Charman left his family home in Kent for the final time in November 2003 and did not return there.

The restriction on Mr Charman's Axis Specialty shares (which had become Axis Capital shares) was lifted on 19 September 2005. At that time the market value of Mr Charman's Restricted Shares was \$11,556,000. On 19 March 2008 Mr Charman exercised and sold some of his Share Options realising a total of \$52,869,540.

Mr Charman appealed against assessments raised by HMRC for the tax years 2001/2, 2002/3, 2003/4, 2004/5, 2005/6 and 2007/8. The total amount of tax in dispute was just over £13 million. The assessments relate to employment income, including bonus payments and expenses, the “founders’ fee”, share options and restricted shares awarded to Mr Charman.

HMRC raised their assessments in March 2010 on the basis that Mr Charman was resident in the UK for the tax year 2001/2 and that he became non-UK tax resident on 27 January 2003. HMRC later argued that Mr Charman did not cease to be resident in the UK for tax purposes until 21 November 2003.

Mr Charman argued that he became non-UK tax resident in October 2001 and therefore none of the amounts on which HMRC seek to charge tax are properly chargeable to UK tax and that HMRC’s assessments have taxed some amounts twice. He had a regular pattern of travel during the relevant years of leaving the UK on a Monday afternoon flight to Bermuda and returning to the UK on a Friday morning on an overnight flight from Bermuda. He retained his personal effects (documents, clothing and his car) at a property in the UK until November 2003, when he removed his belongings from what had been his family home, a few days after telling his wife that he wanted a divorce.

### *Decision*

The First Tier Tribunal found that Mr Charman usually spent only three days a week in Bermuda and the remainder of the time either in transit, in the US or in the UK, so he did not work in Bermuda full time. The Tribunal concluded that Mr Charman was not working “full time abroad” in any of 2001/2, 2002/3 or 2003/4

The Tribunal concluded that he did not decide to make a decisive break with the UK until January 2003 but took no physical action to cut his ties with the UK until 21 November 2003, when he informed his wife that their marriage was over and removed his belongings from the family home, never to return. He signed a new employment contract with Axis in Bermuda on 15 December 2003 that did not include provision for covering the costs of him commuting back to the UK. He was non-UK resident from this date with the following implications:

- 2001/02: Mr Charman was UK resident and taxable on his salary and expenses;
- 2002/03: Mr Charman was UK resident and taxable on his salary, expenses and bonus (for 2002, which was paid on 14 March 2003) and the Founder’s Fee;
- 2003/04: There was no valid assessment for this year. HMRC’s discovery assessment on part of Mr Charman’s bonus for 2003 (which was paid on 12 February 2004) was not valid. The Tribunal found that HMRC “discovered” by 24 November 2006 that Mr Charman’s bonus was potentially liable to tax during the 2003/4 tax year as this was when the discovery assessment was issued in respect of 2001/02. Any later action by HMRC could not be a “new” discovery of a potential under assessment, but only confirmation of the “discovery” made by HMRC.

The authorities are agreed that it is not possible for the same “discovery” to be made twice. The length of time between the “discovery” by HMRC and the issuing of the assessment was too long;

- 2004/05: Mr Charman was not UK tax resident for any part of this year. Any assessment on Mr Charman's bonus for 2003 in this year is not valid; that bonus was paid on 14 February 2004;
- 2005/06: Mr Charman was taxable on the removal of the restriction in September 2005 on his Restricted Shares during this tax year. The fact that the restriction was lifted at a time when Mr Charman was no longer UK resident did not prevent a UK tax charge arising. A tax charge arises under s 427 ITEPA 2003 for the year in which the restrictions were lifted, because Mr Charman was a UK resident at the time when he obtained his beneficial interest in the shares (December 2002);
- 2007/08: Mr Charman is taxable on 2/3rds only of the gain on the Share Options which were exercised and sold in this year. Mr Charman was UK tax resident when he was granted the first two tranches of share options and so a tax charge arises in respect of any gain on these options at the time when they were exercised in 2008, not at the time when they were granted as assumed by HMRC. It was not possible to ascertain which of the options granted to Mr Charman were exercised on which date, hence any gain should be split rateably between the options, assuming that 1/3 of the gain arose in respect of each of the three option tranches. On this basis, HMRC's discovery assessment for the 2007/8 tax year should be amended to charge to tax only 2/3rds of the gain on the exercise of the Share Options.

*John Charman v HMRC (TC06899)*

## **Failure of scheme to generate capital losses**

*Summary - A scheme to generate capital losses failed under the value shifting rules but a loan waiver was not subject to income tax.*

Mr Kerrison was one of a number of participants in a scheme known as Excalibur designed to generate capital losses. Under the scheme, Broadgate Trading Ltd, a new company, was incorporated in the Isle of Man and it acquired a small UK retail trade called the Flower Emporium. Mr Kerrison subscribed for 20 B shares at a cost of £20.

Two weeks later on 9<sup>th</sup> June 2006 he sold his shares to Braye Finance Ltd, an unconnected company for £24.40 (£1.22 per share) and at the same time, under a second agreement, granted Braye Finance Ltd a put option to sell the shares back to him within 30 days at their 'fair value' plus 9.1%.

On 20 June 2006, Braye Finance Ltd exercised the put option and sold his 20 B ordinary shares back to Mr Kerrison for a total consideration of approximately £1.1m. He borrowed approximately £1m from Schroders and used the proceeds of that loan and £100,000 of his own money to fund the purchase under the put option.

On 30 June 2006, Broadgate Trading Ltd established a British Virgin Islands subsidiary, Broadgate Group Holdings Limited. This company advanced an interest-free loan to Mr Kerrison in order for him to repay his borrowing from Schroders. That loan was written off in November 2006.

On 3 December 2006, Mr Kerrison donated his shares in Broadgate Trading Ltd to charity.

It was common ground that the scheme had no commercial purpose and that it was solely designed to create a capital loss which could then be set off against Mr Kerrison's income for income tax purposes under s.574 ICTA 1988.

The First Tier Tribunal explained how the scheme was intended to work:

"The intended tax analysis was that the sale and repurchase from Braye would fall within s 106A Taxation of Chargeable Gains Act 1992 ("TCGA"), such that the shares acquired from Braye would be identified with the shares disposed of to Braye for capital gains tax ("CGT") purposes, giving rise to a substantial capital loss on the basis that the appellant had acquired shares for a significant sum and sold them for a nominal amount. The appellant would be entitled to claim relief against income tax in respect of the loss under s 574 Income and Corporation Taxes Act 1988 ("ICTA"). The disposal to charity was a "no gain no loss" disposal (s 257 TCGA)."

HMRC argued that the scheme was caught by the value shifting rules in s30 TCGA 1992 that provides as follows:

"(1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby-

(a) the value of the asset ... has been materially reduced, and

(b) a tax-free benefit has been or will be conferred-

(i) on the person making the disposal or a person with whom he is connected"

The second issue was whether the loan waiver was chargeable to income tax under s687(1) ITTOIA 2005 that states:

"Income tax is charged under this Chapter on income from any source that is not charged to income tax under or as a result of any other provision of this Act or any other Act."

### *Decision*

The aim of the scheme was to create an increase in value of the shares via the disposal to Braye Finance Ltd close to par with the subsequent reacquisition within 30 days at a greatly increased price.

Agreeing with the First Tier Tribunal, the Upper Tribunal found that s30 TCGA 1992 could apply to an increase in the value contemplated by the parties as 30(9) states that:

"In relation to a case in which the disposal of an asset precedes its acquisition the references in subsections (1)(a) .... above to a reduction shall be read as including a reference to an increase."

This latter acquisition was therefore caught by s 30(9).

On the second issue, once again agreeing with the First Tier Tribunal, the Upper Tribunal found that the loan write off, or waiver, was not chargeable under s687 ITTOIA 2005 as it was an entirely voluntary one –off transaction that was clearly capital. Broadgate Group Holdings Limited was under no obligation to grant the write off. The Tribunal saw no genuine analogy between the loan write off and a dividend or other income distribution. The loan write off was not made in respect of Mr Kerrison's shareholding in Broadgate Trading Ltd but rather to collapse the scheme in which he had participated.

*Adrian Kerrison v HMRC [2019] UKUT 0008(TCC)*

### **Failure to notify chargeability – deliberate or careless**

*Summary – HMRC's failure to inform the taxpayer that he had been removed from self-assessment provided the taxpayer with a reasonable excuse for his failure to notify liability.*

The taxpayer was a self-employed singer/songwriter and musician. In 2008/09, he moved to the US returning to the UK in 2011/12. He was touring abroad for much of the time and so failed to send relevant tax information to his accountant. Eventually, in April 2014, his accountant tried to file Mr Redman's 2011/12 and 2012/13 returns but was unable to do so because HMRC had removed Mr Redman from the self-assessment system on 18 December 2011 for years after 2010/11. His accountant wrote to HMRC stating:

“Only when recently coming to submit Mr Redman's late 2011-12 and 2012-13 SA tax returns did we realise that HM Revenue & Customs appeared to have removed our client from Self-Assessment after 2010- 11, not issuing tax return notices for those two later years.

This left Mr Redman not with late tax returns but with effective failure to notify liability under s 7 TMA 1970 for the affected years. We understand from you that your records show that the removal from SA occurred on 18 December 2011. We have no evidence of this ever having been notified to our client or us.”

The issue to be resolved was whether Mr Redman was liable to penalties for deliberate, (or alternatively careless), failure to notify chargeability resulting in penalties of close to £100,000. Mr Redman argued that he had a reasonable excuse for failing to notify liability.

#### *Decision*

The Tribunal said that a taxpayer can only be 'liable to a penalty for a “deliberate” failure to notify liability, if he knew about that obligation and decided not to comply, or (possibly), if he intentionally chose not to find out the true position, even though he knew that he should do so.'

The Tribunal found as a fact that 'Mr Redman and his accountant were unaware that he had been taken out of the self-assessment system, so he did not know about the obligation, and he did not intentionally shut his eyes to the true position. It was therefore not possible for Mr Redman to be liable to a penalty for deliberate failure to notify.'

The Tribunal concluded that Mr Redman had not been careless as he had been in the self-assessment system since 1996. He knew he had missed the filing deadlines, but he had no reason to believe that he had an obligation to notify chargeability. The accountant contacted HMRC promptly on realising that he could not file Mr Redman's returns, to notify liability so 'without unreasonable delay'. The Tribunal concluded that Mr Redman has a reasonable excuse for his failure to notify.

The taxpayer's appeal was allowed.

*Matthew Redman v HMRC (TC06857)*

### **Change of address notified**

*Summary – The taxpayer had a reasonable excuse for the late filing of his returns claiming that he had not received documents, including notices to file a self-assessment return, from HMRC.*

Until August 2013, Oliver Wincott had been self-employed and had successfully filed self-assessment tax returns as required by HMRC.

On becoming an employee in 2013/14, he completed a P46. Later, in February 2014, he moved house, informing his employer of his new address. With his tax collected under PAYE, having notified his address on his P46, and subsequently receiving documents such as his P60s at his new address, he believed that HMRC knew of this address. However, HMRC had sent notices to file to his previous address.

He moved again in July 2016 and, because of a tax code query, told HMRC his new address in September 2017 and at this time learned of his late returns and penalties. He filed the reruns in November 2017. He appealed, claiming that he had not received documents, including notices to file self-assessment returns, from HMRC.

### *Decision*

Having completed a P46 when employment started, informing his employer of his address, the First Tier Tribunal stated that an employee could well assume that HMRC's records had been updated from relevant information provided by their employer to HMRC.

With tax collected under PAYE and believing that he did not need to file a self-assessment return Oliver Wincott had good reason to believe that HMRC knew his address as he was receiving his P60s at this address. Although HMRC had not received any change of address details from him, they should have received them from his employer.

The Tribunal concluded that Oliver Wincott had a reasonable excuse for filing both his 2013/14 and 2014/15 returns late.

The taxpayer's appeal was allowed.

*Oliver Ralph Wincott v HMRC (TC06919)*